

## **EXHIBIT 1**

### **INTRODUCTION**

Respondent No on Measure C (“Committee”) was a committee primarily formed to oppose a local ballot measure in the March 5, 2002, East Palo Alto election. Respondent Carol Jansen (“Jansen”) served as Respondent Committee’s treasurer at all times relevant to this matter.

Respondent Committee was a sponsored ballot measure committee. As such, Respondents were required by the Political Reform Act (“Act”)<sup>1</sup> to identify Respondent Committee’s sponsor in a statement of organization and to include the sponsor’s name in the name of the committee. Respondents were also required to file campaign statements and reports disclosing contributions received and expenditures made, and to return certain contributions for which they did not have required contributor information. In this matter, Respondents: (1) failed to disclose Respondent Committee’s sponsor in its statement of organization and did not include the sponsor’s name in Respondent Committee’s name; (2) failed to properly report contributions received; (3) failed to disclose required contributor and payee information; (4) failed to return certain contributions for which required contributor information was not maintained; (5) failed to disclose late contributions in properly filed late contribution reports; and (6) failed to file semi-annual campaign statements.

For purposes of this Default Decision and Order, Respondents’ violations of the Act are stated as follows:

**COUNT 1:** Respondents No on Measure C and Carol Jansen failed to identify Anderson Honda as the sponsor of Respondent Committee, and failed to include Anderson Honda in Respondent Committee’s name on its statements of organization filed on or about January 30, 2002, and on or about February 8, 2002, in violation of Section 84102, subdivisions (a) and (b) of the Government Code.

**COUNT 2:** Respondents No on Measure C and Carol Jansen failed to disclose six contributions totaling approximately \$8,210 in a pre-election campaign statement for the reporting period from January 20, 2002 through February 16, 2002, filed on February 22, 2002, in violation of Section 84211, subdivision (f) of the Government Code.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

- COUNT 3: Respondents No on Measure C and Carol Jansen failed to disclose occupation and employer information for five individuals who contributed \$100 or more, totaling approximately \$10,500, in a pre-election campaign statement for the reporting period from January 20, 2002 through February 16, 2002, filed on February 22, 2002, in violation of Section 84211, subdivision (f) of the Government Code.
- COUNT 4: On or about March 5, 2002, Respondents No on Measure C and Carol Jansen failed to disclose two late contributions totaling \$15,000 in a properly filed late contribution report, in violation of Section 84203, subdivisions (a) and (b) of the Government Code.
- COUNT 5: Respondents No on Measure C and Carol Jansen failed to disclose occupation and employer information for an individual who contributed \$5,000, in a late contribution report filed on March 6, 2002, in violation of Section 84203, subdivision (a) of the Government Code.
- COUNT 6: Respondents No on Measure C and Carol Jansen failed to return within 60 days of receipt, five contributions of \$100 or more totaling \$13,000 for which they did not have occupation and employer information, in violation of Section 85700, subdivision (a) of the Government Code.
- COUNT 7: On campaign statements for the reporting periods from January 20, 2002 through June 30, 2002, Respondents No on Measure C and Carol Jansen failed to report required subvendor information for payments totaling approximately \$9,898 made on behalf of Respondent Committee by Jansen Consulting, in violation of Sections 84303 and 84211, subdivision (k) of the Government Code.
- COUNT 8: Respondents No on Measure C and Carol Jansen failed to file a semi-annual campaign statement for the reporting period from February 17, 2002 through June 30, 2002, by the July 31, 2002 due date, in violation of Section 84200, subdivision (a) of the Government Code.
- COUNT 9: Respondents No on Measure C and Carol Jansen failed to file a semi-annual campaign statement for the reporting period from July 1, 2002 through December 31, 2002, by the January 31, 2003 due date, in violation of Section 84200, subdivision (a) of the Government Code.
- COUNT 10: Respondents No on Measure C and Carol Jansen failed to disclose contributions totaling approximately \$18,191 in semi-annual campaign statements for the reporting periods from February 17, 2002 through December 31, 2002, in violation of Section 84211, subdivisions (a), (c), and (f) of the Government Code.

## **THE RESPONDENTS**

This matter involves two respondents: Respondent No on Measure C (“Committee”) and its treasurer Respondent Carol Jansen (“Jansen”).

## **DEFAULT PROCEEDINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT**

When the Fair Political Practices Commission (the “Commission”) determines that there is probable cause for believing that the Act has been violated, it may hold a hearing to determine if a violation has occurred. (Section 83116.) Notice of the hearing, and the hearing itself, must be conducted in accordance with the Administrative Procedure Act (the “APA”).<sup>2</sup> (Section 83116.) A hearing to determine whether the Act has been violated is initiated by the filing of an accusation, which shall be a concise written statement of the charges specifying the statutes and rules which the respondent is alleged to have violated. (Section 11503.)

Included among the rights afforded a respondent under the APA, is the right to file the Notice of Defense with the Commission within 15 days after service of the accusation, by which the respondent may (1) request a hearing, (2) object to the accusation’s form or substance or to the adverse effects of complying with the accusation, (3) admit the accusation in whole or in part, or (4) present new matter by way of a defense. (Section 11506, subd. (a)(1)-(6).)

The APA provides that a respondent’s failure to file a Notice of Defense within 15 days after service of an accusation constitutes a waiver of the respondent’s right to a hearing. (Section 11506, subd. (c).) Moreover, when a respondent fails to file a Notice of Defense, the Commission may take action based on the respondent’s express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the respondent. (Section 11520, subd. (a).)

## **PROCEDURAL REQUIREMENTS AND HISTORY**

### **A. Initiation of the Administrative Action**

Section 91000.5 provides that “[t]he service of the probable cause hearing notice, as required by Section 83115.5, upon the person alleged to have violated this title shall constitute the commencement of the administrative action.” (Section 91000.5, subd. (a).) Section 83115.5 provides in pertinent part:

No finding of probable cause to believe this title has been violated shall be made by the Commission unless, at least 21 days prior to the Commission’s consideration of the alleged violation, the person alleged to have violated

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<sup>2</sup> The Administrative Procedure Act is contained in Government Code Sections 11370 through 11529.

this title is notified of the violation by service of process or registered mail with return receipt requested . . . . Notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office.

Section 91000.5 provides that no administrative action pursuant to Chapter 3 of the Act, alleging a violation of any of the provisions of Act, shall be commenced more than five years after the date on which the violation occurred. In accordance with Sections 83115.5 and 91000.5, the Enforcement Division initiated the administrative action against Respondents in this matter by serving both Respondent Jansen and James E. Kemp<sup>3</sup>, with a Report in Support of a Finding of Probable Cause (the "Probable Cause Report") on July 26, 2006. (See Certification of Records ("Certification") filed herewith, Exhibit A, and incorporated herein by reference.) The Probable Cause Report was served by certified mail, return receipt requested. (See Certification, Exhibit A - 1.)

Service was effective as to Mr. Kemp on July 27, 2006 – the date the registered mail return receipt was signed. Service was effective as to Respondent Jansen on September 5, 2006 – the date the United States Postal Service returned to the Enforcement Division the unclaimed packet of material together with the unsigned return receipt. (Section 83115.5.) (Certification, Exhibit A - 1.) Therefore, the administrative action commenced at least on September 5, 2006, the date Respondent Jansen was served the Probable Cause Report. The five year statute of limitations was effectively tolled on this date, and Respondents' 2002 violations are still ripe for enforcement. (Sections 83115.5; 91000.5.)

As required by Section 83115.5, the packet served on Respondent Jansen contained the Probable Cause Report, advising that Respondents had 21 days in which to request a probable cause conference and/or to file a written response to the Probable Cause Report. (See Certification, Exhibit A - 2.) Respondents neither requested a probable cause conference nor submitted a written response to the Probable Cause Report.

B. Ex Parte Request for a Finding of Probable Cause.

Since Respondents failed to request a probable cause conference or submit a written response to the Probable Cause Report by the statutory deadline, on September 27, 2006, the Enforcement Division submitted an Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation be Prepared and Served to former

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<sup>3</sup> In April 2006 Mr. Kemp verbally advised us that he represented Respondents Jansen and Committee, and agreed to submit a letter of representation. As of late July 2006 we had not received a letter of representation from him. After several unsuccessful attempts to reach Mr. Kemp to determine whether he continued to represent Respondents in this matter and was authorized to accept service on their behalf, we served both Mr. Kemp and Respondent Jansen with the Report in Support of a Finding of Probable Cause.

Executive Director Mark Krausse. (See Certification, Exhibit A - 3.) Respondent Jansen was sent copies of these documents via U.S. mail. (Certification, Exhibit A - 4.)

On September 29, 2006, Executive Director Mark Krausse issued an Order Finding Probable Cause. (Certification, Exhibit A - 5.)

C. The Issuance and Service of the Accusation.

Under the Act, if the Executive Director makes a finding of probable cause, he or she must prepare an accusation pursuant to Section 11503 of the APA, and have it served on the subject of the probable cause finding. (Regulation 18361.4, subd. (e).) Section 11503 provides:

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

On November 30, 2006, the Executive Director issued an Accusation against the Respondents in this matter. In accordance with Section 11505, the Accusation and accompanying information, consisting of the Order Finding Probable Cause, dated September 29, 2006, a Statement to Respondent, two copies of a Notice of Defense Form, copies of Government Code Sections 11506, 11507.5, 11507.6 and 11507.7, and a cover letter dated December 12, 2006, were personally served on Respondent Jansen individually and on behalf of Respondent Committee on December 14, 2006. (See Certification, Exhibit A - 6.)

Section 11505, subdivision (c) provides that the Accusation and accompanying information may be sent to the respondent by any means selected by the agency, but that no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent has been served personally or by registered mail as set forth in Section 11505. Along with the Accusation, the Enforcement Division served Respondent Jansen with a "Statement to Respondent" which notified her that she could request a hearing on the merits and warned that, unless a Notice of Defense was filed within fifteen days of service of the Accusation, she would be deemed to have waived the right to a hearing. Neither Respondent Jansen nor any other person acting on behalf of

Respondent Jansen or Respondent Committee filed a Notice of Defense within the statutory time period, which ended on December 29, 2006.

As a result, on January 29, 2008, Commission Counsel Margaret E. Figeroide sent a letter to Respondent Jansen advising that this matter would be submitted for a Default Decision and Order at the Commission's public meeting scheduled for February 14, 2008. A copy of the Default Decision and Order, and this accompanying Exhibit 1 with attachments, was included with the letter. (See Certification, Exhibit A - 7.)

## **SUMMARY OF THE LAW**

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures affecting election campaigns are fully disclosed to the public, so that voters may be better informed, and improper practices may be inhibited. To that end, the Act sets forth a comprehensive campaign reporting system designed to accomplish this purpose of disclosure.

### **Statute of Limitations for Administrative Proceedings**

Section 91000.5 provides that an administrative action, pursuant to Chapter 3 of the Act (commencing with Section 83100) alleging a violation of any provision of the Act, shall not be commenced more than five years after the date on which the violation occurred. Subdivision (a) of that section states that the service of a probable cause hearing notice, as required by Section 83115.5, upon the person alleged to have violated the Act, shall constitute the commencement of the administrative action.

### **Duty to File a Statement of Organization and Disclose Sponsor**

Section 82013, subdivision (a) defines a "committee" to include any person who directly or indirectly receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year. This type of committee is commonly referred to as a "recipient committee." Section 82047.5 defines a "primarily formed committee" to include a recipient committee which is formed or exists primarily to support or oppose a single ballot measure.

Under Section 84101, subdivision (a), a person who qualifies as a recipient committee must file a statement of organization (Form 410) with the Secretary of State within 10 days of qualifying. A copy of the statement of organization must also be filed with the local filing officer, if any. Pursuant to Section 84103, subdivision (a), whenever there is a change in any of the information contained in a statement of organization, an amendment must be filed with the Secretary of State within 10 days to reflect the change. A copy of the amendment must also be filed with the local filing officer, if any.

Section 82048.7, subdivision (a) defines a "sponsored committee" as a recipient committee, other than a candidate controlled committee, with one or more sponsors. Under Section 82048.7, subdivision (b), an organization sponsors a committee if any of

the following apply: (1) the committee receives 80 percent or more of its contributions from the organization; (2) the organization collects contributions for the committee by use of payroll deductions or dues; (3) the organization provides all or nearly all of the administrative services for the committee; or (4) the organization sets the policies for soliciting contributions or making expenditures of committee funds.

If a committee has a sponsor, Section 84102, subdivision (a) requires that the name of the sponsor be included in the name of the sponsored committee, as stated in the statement of organization. Section 84102, subdivision (b) requires that the name, street address, and telephone number of each sponsor be disclosed on the statement of organization.

### **Duty to File Campaign Statements**

A recipient committee has the obligation to file periodic campaign statements disclosing contributions received and expenditures made by the committee during the reporting period covered by the campaign statement. Section 84200, subdivision (a) requires recipient committees to file two semi-annual campaign statements each year. The first semi-annual campaign statement covers the reporting period from January 1 to June 30, and must be filed by July 31 of the same year. The second semi-annual campaign statement covers the reporting period from July 1 to December 31, and must be filed by January 31 of the following year.

Pursuant to Section 82046, subdivision (b), the period covered by a campaign statement is the period beginning the day after the closing date of the most recent campaign statement which was required to be filed and ending with the closing date of the statement in question, unless a different period is specified. If a person has not previously filed a campaign statement, the period covered begins on January 1.

Generally, primarily formed ballot measure committees are required, pursuant to Section 84202.3, subdivision (a), to file quarterly campaign statements. This does not apply during the semi-annual reporting period in which the measure is voted upon and after the election, unless the committee makes contributions or expenditures to support or oppose the qualification or passage of another ballot measure. (Section 84202.3, subds. (b) and (c).)

Under Section 84200.5, subdivision (c), in addition to the campaign statements required by Section 84200, committees primarily formed to support or oppose a local measure to be voted upon in one city on a date other than the first Tuesday after the first Monday in June or November of an even-numbered year are required to file pre-election campaign statements pursuant to Section 84200.8. Section 84200.8 provides for the filing of two pre-election campaign statements prior to an election. For the reporting period ending 45 days before the election, the first pre-election campaign statement is required to be filed no later than 40 days before the election. (Section 84200.8, subd. (a).) For the reporting period ending 17 days before the election, the second pre-election

campaign statement is required to be filed no later than 12 days before the election. (Section 84200.8, subd. (b).)

Pursuant to Section 84215, subdivision (e), committees formed or existing primarily to support or oppose a local measure to be voted upon in one city are required to file an original and one copy of their campaign statements with the clerk of the city.

A recipient committee's filing obligations continue until it is terminated by filing a statement of termination with the Secretary of State and a copy with the local filing officer, if any. (Section 84214; regulation 18404, subd. (b).)

### **Duty to Disclose and Itemize Contributions Received**

Section 84211, subdivision (a) requires a committee to disclose in each of its campaign statements the total amount of contributions received during the period covered by the campaign statement and the total cumulative amount of contributions received. A "contribution" includes any payment made for political purposes for which full and adequate consideration is not made to the donor. (Section 82015; regulation 18215.) A contribution can be monetary or non-monetary. All contributions received by a person acting as an agent of a committee are required to be reported to and disclosed by the committee's treasurer no later than the closing date of the next campaign statement the committee is required to file. (Regulation 18421.1, subd. (c).)

A monetary contribution is "received" on the date the committee, or the agent of the committee, obtains possession or control of the check or other negotiable instrument by which the contribution is made. (Regulation 18421.1, subd. (c).) A non-monetary contribution is "made" by the contributor, and "received" by the committee, on the earlier of the following dates: (1) the date the funds are expended by the contributor for goods or services, if the specific expenditure is made at the behest of the committee; or (2) the date the committee or its agent obtains possession or control of the goods or services, or the date the committee otherwise receives the benefit of the expenditure. (Regulation 18421.1, subd. (f).)

Section 84211, subdivision (f) requires a committee to report in each of its campaign statements the following information about a person if the cumulative amount of contributions received from that person is one hundred dollars (\$100) or more and a contribution has been received from that person during the reporting period covered by the campaign statement: (1) the contributor's full name; (2) the contributor's street address; (3) the contributor's occupation; (4) the name of the contributor's employer, or if self-employed, the name of the contributor's business; (5) the date and amount of each contribution received from the contributor during the reporting period; and (6) the cumulative amount of contributions received from the contributor. In this matter, "cumulative amount" means the amount of contributions received in the calendar year. (Section 82018, subdivision (a).)



### **Duty to Return Contributions with Insufficient Contributor Information**

Under Section 85700, subdivision (a), a committee is required to return within 60 days of receipt, any contribution of one hundred dollars (\$100) or more for which the committee does not have on file in its records the name, address, occupation, and employer of the contributor. If the contribution cannot be returned and it was made in connection with a local election, the contribution is required to be paid to the general fund of the local jurisdiction in which the committee is based. (Regulation 18750, subd. (c).)

### **Duty to Disclose and Itemize Expenditures**

Section 82025 defines “expenditure” as a payment, forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. Pursuant to Section 82025, an expenditure is “made” on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.

Section 84211, subdivision (k) requires that certain information be provided for each person to whom an expenditure of one hundred dollars (\$100) or more has been made during the period covered by the campaign statement, including the following: (1) the payee’s full name; (2) the payee’s street address; (3) the amount of each expenditure; (4) a brief description of the consideration for which each expenditure was made; (5) in the case of an expenditure which is a contribution to a candidate, elected officer, or committee or an independent expenditure to support or oppose a candidate or measure, in addition to the information required in paragraphs (1) to (4) above, the date of the contribution or independent expenditure, the cumulative amount of contributions made to a candidate, elected officer, or committee, or the cumulative amount of independent expenditures made relative to a candidate or measure; the full name of the candidate, and the office and district for which he or she seeks nomination or election, or the number or letter of the measure; and the jurisdiction in which the measure or candidate is voted upon; and (6) the information required in paragraphs (1) to (4), inclusive, for each person, if different from the payee, who has provided consideration for an expenditure of five hundred dollars (\$500) or more during the period covered by the campaign statement.

### **Duty to Report Payments Made to Subvendors**

Section 84303 provides that no expenditure of five hundred dollars (\$500) or more shall be made, other than for overhead and normal operating expenses, by an agent or independent contractor, including, but not limited to, an advertising agency, on behalf of, or for the benefit of any committee, unless it is reported by the committee as if the expenditure was made directly by the committee. Regulation 18431, subdivision (c) requires disclosure of the expenditures made by an agent or independent contractor to be made at the same time and in the same manner and detail as required under Section 84211, subdivision (k) for the committee’s direct expenditures as set forth above.

### **Duty to File Late Contribution Reports**

Under Section 84203, subdivisions (a) and (b), when a committee makes or receives a late contribution, the committee must file a late contribution report disclosing the contribution within 24 hours of making or receiving the contribution. Section 84203, subdivision (a) also requires the recipient of a late contribution to report the full name of the contributor, his or her street address, occupation, and the name of his or her employer, or if self-employed, the name of the business. In addition, a late contribution is required to be disclosed on a committee's post-election semi-annual campaign statement. (Section 84203, subdivision (b).)

Section 82036 defines a "late contribution" to include a contribution aggregating one thousand dollars (\$1,000) or more that is made to or received by a primarily formed ballot measure committee before the date of the election at which the measure is to be voted on, but after the closing date of the last pre-election campaign statement that is required to be filed before the election. Under Section 84200.8, for an election not held in June or November of an even-numbered year, the late contribution reporting period covers the last 16 days before the election.

### **Liability of Committee Treasurers**

Under Sections 81004, subdivision (b), 84100, and regulation 18427, subdivision (a), it is the duty of a committee's treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. Sections 83116.5 and 91006 provide that a committee's treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee.

The actions of Respondents Committee and Jansen, in failing to disclose Respondent Committee's sponsor on its statement of organization and include the name of its sponsor in Respondent Committee's name, failing to report contributions received, failing to disclose required contributor and payee information, failing to return certain contributions for which required contributor information was not maintained, failing to report payments made by an agent or independent contractor on behalf or for the benefit of Respondent Committee, failing to disclose late contributions in properly filed late contribution reports, and failing to file semi-annual campaign statements as required under the Act, are in violation of the law and public policies of the State of California.

### **SUMMARY OF THE EVIDENCE**

Commission Investigator Sandra Buckner's declaration regarding the following summary of the evidence in this matter is attached hereto as Exhibit B.

According to records maintained by the Secretary of State's Office, Respondent Committee was a ballot measure committee primarily formed to oppose Measure C in the March 5, 2002 East Palo Alto election. Respondent Jansen served as Respondent

Committee's treasurer. According to Respondent Committee's bank records, Respondent Committee received approximately \$49,878 in contributions and made approximately \$49,677 in expenditures in connection with the March 5, 2002 election.

A complaint filed with the Enforcement Division on February 5, 2002, provided information regarding Respondent Committee's activities, and questioned whether Respondent Committee was a sponsored committee that was required to disclose its sponsor on the committee's statement of organization. According to records maintained by the Secretary of State's Office, Respondents filed an initial and amended statement of organization, neither of which indicated that Respondent Committee was sponsored.

According to records maintained by the East Palo Alto City Clerk's Office (the "City") Respondents filed a pre-election campaign statement and two late contribution reports, and nothing thereafter. According to the City, Respondents still had not filed other required statements as of January 18, 2007.

### COUNT 1

#### **Failure to Disclose Sponsor in Statement of Organization**

As a sponsored ballot measure committee, Respondent Committee and Jansen had a duty to disclose Respondent Committee's sponsor on its statement of organization, and to include the name of the sponsor in Respondent Committee's name.

According to Respondent Committee's bank records, Respondents deposited a \$10,000 contribution from Anderson Honda on January 23, 2002, which qualified Respondent Committee as a recipient committee under Section 82013, subdivision (a). This was the only contribution Respondents had received when Respondent Committee's initial statement of organization was filed with the City on January 29, 2002, and the Secretary of State on January 30, 2002. When the initial statement of organization was filed, 100 percent of Respondent Committee's contributions were from Anderson Honda, which qualified Anderson Honda as Respondent Committee's sponsor under Section 82048.7, subdivision (b). According to the records maintained by the Secretary of State and the City, Respondents failed to disclose Anderson Honda as Respondent Committee's sponsor, and failed to include Anderson Honda as part of the committee's name on its initial statement of organization.

According to records maintained by the Secretary of State, Respondents filed another statement of organization with the Secretary of State on February 8, 2002, in which Respondents changed Respondent Committee's name from "No on C, Committee Against Prop/Measure C" to "No on Measure C." According to Respondent Committee's bank records, as of February 8, 2002, Respondents had received approximately \$21,000 in monetary contributions, of which \$20,000, or approximately 95 percent, was from Anderson Honda. According to records maintained by the Secretary of State, Respondents failed to disclose Anderson Honda as Respondent Committee's sponsor and add "Anderson Honda" to Respondent Committee's name on its statement of organization filed with the Secretary of State on February 8, 2002.

By failing to disclose the name of Respondent Committee's sponsor and include the sponsor's name in the name of the committee on its statements of organization, Respondents violated Section 84102, subdivisions (a) and (b).

COUNT 2  
**Failure to Disclose Contributions Received**

Respondents Committee and Jansen had a duty to disclose all contributions received, and specified information for all persons who contributed \$100 or more to Respondent Committee.

According to Respondent Committee's bank records, Respondents deposited a \$1,000 contribution check from Roxy and Michelle Rapp into Respondent Committee's bank account on February 4, 2002. On February 22, 2002, according to records maintained by the City, Respondents filed a pre-election campaign statement for the reporting period from January 20, 2002<sup>4</sup> through February 16, 2002. This statement reveals that Respondents did not disclose the \$1,000 contribution from Roxy and Michelle Rapp.

According to Respondent Committee's bank records, Respondents deposited a \$2,000 contribution check from Barry Rodenberg into Respondent Committee's bank account on February 15, 2002. According to Carol Jansen dba Jansen Consulting's bank records, Carol Jansen dba Jansen Consulting made two non-monetary contributions to Respondent Committee totaling \$210 during the pre-election reporting period from January 20, 2002 through February 16, 2002. On February 22, 2002, according to records maintained by the City, Respondents filed a pre-election campaign statement for the reporting period from January 20, 2002 through February 16, 2002. This statement reveals that Respondents did not disclose the \$2,000 contribution from Barry Rodenberg, or the two non-monetary contributions from Carol Jansen dba Jansen Consulting.

According to Respondent Jansen, Respondents received four \$2,500 contribution checks from Anderson Honda on or about February 7, 2002. On February 22, 2002, according to records maintained by the City, Respondents filed a pre-election campaign statement for the reporting period from January 20, 2002 through February 16, 2002. This campaign statement reveals that Respondents did not disclose two of the \$2,500 contributions from Anderson Honda.

By failing to properly report six contributions totaling \$8,210 in a pre-election campaign statement for the reporting period from January 20, 2002 through February 16, 2002, Respondents violated Section 84211, subdivision (f).

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<sup>4</sup> Respondents mistakenly designated January 22, 2002, as the starting date of the pre-election reporting period. Because this was the first campaign statement Respondents filed in 2002, January 1, 2002, should have been disclosed as the starting date of the period covered. (Section 82046, subd. (b).)

COUNTS 3 and 5  
**Failure to Disclose Required Contributor Information**

Count 3

Respondents Committee and Jansen had a duty to disclose in campaign statements the occupation and employer of any individual whose cumulative amount of contributions totaled \$100 or more and a contribution was received from that individual during the reporting period covered by the campaign statement.

On February 22, 2002, according to records maintained by the City, Respondents filed a pre-election campaign statement for the reporting period from January 20, 2002 through February 16, 2002. This campaign statement reflects that Respondent Committee received five contributions of \$100 or more from individuals, totaling \$10,500. The pre-election campaign statement also reflects that Respondents failed to report required occupation and employer information for these five contributors. For each contribution not properly reported on the pre-election campaign statement, the following table reflects the date the contribution was received, the source, and the amount of the contribution.

<b>Receipt Date</b>	<b>Name of Contributor</b>	<b>Amount</b>
02/15/02	David J. Mani	\$2,000
02/15/02	John Garibaldi	2,500
02/15/02	William Tarr	2,500
02/15/02	John M. Tanaka	1,500
02/15/02	Peery Arrillaga	2,000
	<b>Total</b>	<b>\$10,500</b>

By failing to report required occupation and employer information for five individuals who contributed \$100 or more, Respondents violated Section 84211, subdivision (f).

Count 5

Respondents Committee and Jansen had a duty to disclose in a late contribution report the occupation and employer of each contributor.

According to records maintained by the City, Respondents filed a late contribution report on March 6, 2002, to disclose a late contribution which Respondent Committee's bank account records indicate was deposited on March 4, 2002. This late contribution report reflects that Respondent Committee received one late contribution of \$5,000 from Jeffrey Rosen on March 5, 2002. The late contribution report also reflects that Respondents failed to report required occupation and employer information for this contributor.

By failing to disclose the occupation and employer of the contributor of a \$5,000 late contribution in a properly filed late contribution report, Respondents violated Section 84203, subdivision (a).

#### COUNT 4

##### **Failure to Disclose Late Contributions in Properly Filed Late Contribution Reports**

Respondents Committee and Jansen had a duty to disclose the receipt or making of a late contribution in a properly filed late contribution report. The late contribution reporting period for the March 5, 2002 election was February 17, 2002 through March 4, 2002.

According to Respondent Committee's bank records, on March 4, 2002, during the late contribution reporting period, a \$10,000 contribution check from Anderson Honda and a \$5,000 contribution check from Jeffrey Rosen were deposited into Respondent Committee's bank account. Respondents were required to disclose these late contributions in a properly filed late contribution report within 24 hours, or by March 5, 2002. According to records maintained by the City, on March 6, 2002, the day after the election, Respondents disclosed in a late contribution report the receipt date of the two late contributions as March 5, 2002.

By failing to disclose the receipt of two late contributions totaling \$15,000 in properly filed late contribution reports, Respondents violated Section 84203, subdivisions (a) and (b).

#### COUNT 6

##### **Failure to Return Contributions Due to Insufficient Contributor Information**

Respondents had a duty to return within 60 days of receipt, any contribution of \$100 or more for which they did not have the contributor's occupation and employer information on file in their records.

On February 22, 2002, according to records maintained by the City, Respondents filed a pre-election campaign statement for the reporting period January 20, 2002 through February 16, 2002. This campaign statement reflects that Respondent Committee received five contributions of \$100 or more from individuals, totaling \$10,500. The pre-election campaign statement also reflects that Respondents failed to report required occupation and employer information for these five contributors. According to records of Respondent Committee, Respondents did not have the occupation and employer information on file in its records for four of the contributors, whose contributions totaled \$8,000. According to Respondent Committee's bank records, Respondents did not return these four contributions to the contributors within 60 days of receiving them, nor did they pay the contributions to the City.

On March 6, 2002, according to records maintained by the City, Respondents filed a late contribution report. This late contribution report reflects that Respondent

Committee received one contribution of \$100 or more from an individual, totaling \$5,000. This late contribution report also reflects that Respondents failed to report required occupation and employer information for the contributor. According to records of Respondent Committee, Respondents did not have the occupation and employer information on file in its records for this contributor. According to Respondent Committee's bank records, Respondents did not return this contribution to the contributor within 60 days of receiving it, nor did they pay the contribution to the City.

The following table reflects the date the five contributions were received, the sources, and the amounts of the contributions.

<b>Receipt Date</b>	<b>Name of Contributor</b>	<b>Amount</b>
02/15/02	David J. Mani	\$ 2,000
02/15/02	John Garibaldi	\$ 2,500
02/15/02	John M. Tanaka	\$ 1,500
02/15/02	Peery Arrillaga	\$ 2,000
03/05/02	Jeffrey Rosen	\$ 5,000
	<b>Total</b>	<b>\$13,000</b>

By failing to return within 60 days of receipt contributions of \$100 or more for which Respondents did not have on file in its records the contributors' occupation and employer information, Respondents violated Section 85700, subdivision (a).

#### COUNT 7

#### **Failure to Report Payments Made to Subvendors**

Respondents Committee and Jansen had a duty to report in their campaign statements, payments of \$500 or more made by an agent to a subvendor on Respondent Committee's behalf for campaign services, as if the expenditures were made directly by the committee.

According to Respondent Jansen, she contracted with Brian Burns for campaign consulting and services for Respondent Committee in connection with the March 5, 2002 election. According to Jansen Consulting's bank records, six payments totaling \$9,898.23 were made to Brian Burns from Jansen Consulting's bank account for his services and expenses in running the campaign. Four of those payments, totaling \$6,463.22, were made during the pre-election campaign reporting period from January 20, 2002 through February 16, 2002, and the remaining two payments, totaling \$3,435.01 were made during the reporting period from February 17, 2002 through June 30, 2002.

The following table reflects the six payments, and the dates they were made.

<b>Date of Payment</b>	<b>Amount</b>
01/28/02	\$1,537.97
02/02/02	\$1,644.63

02/09/02	\$1,597.33
02/15/02	\$1,683.29
<b>Subtotal</b>	<b>\$6,463.22</b>
02/24/02	\$1,592.89
02/26/02	\$1,842.12
<b>Subtotal</b>	<b>\$3,435.01</b>
<b>TOTAL</b>	<b>\$9,898.23</b>

Respondent Committee's bank records reveal that Respondent Jansen wrote checks from Respondent Committee's bank account to Jansen Consulting on the same dates and for the same amounts listed above, except for the payment made to Jansen Consulting on January 28, 2002, which was three dollars less than the payment made to Brian Burns on that same day. The pre-election statement for the reporting period from January 20, 2002 through February 16, 2002, filed with the City on February 22, 2002, did not disclose required subvendor information for Brian Burns, who was the true recipient of the four payments totaling \$6,460.22. The pre-election statement incorrectly reflects that an expenditure of \$6,200 was made to Jansen Consulting for "staff expenses" from January 26, 2002 through February 15, 2002.

According to the City, Respondents did not file a semi-annual campaign statement for the reporting period from February 17, 2002 through June 30, 2002. Therefore, the two expenditures totaling \$3,435.01 made to Brian Burns by Jansen Consulting on behalf of Respondent Committee during the reporting period from February 17, 2002 through June 30, 2002, were never reported.

By failing to report required subvendor information for six expenditures of \$500 or more totaling \$9,898.23, Respondents violated Sections 84303 and 84211, subdivision (k).

#### COUNTS 8 and 9 **Failure to File Semi-Annual Campaign Statements**

Respondents Committee and Jansen had a duty to file semi-annual campaign statements from the date Respondent Committee was formed until it was properly terminated.

#### Count 8

According to committee campaign records and bank account records of Respondent Committee, Respondents received approximately \$17,670 in contributions, and made approximately \$32,700 in expenditures during the reporting period from February 17, 2002 through June 30, 2002. Respondents were required to file a semi-annual campaign statement disclosing its activity for that reporting period with the City by July 31, 2002. According to records maintained by the City, Respondents failed to file



a semi-annual campaign statement for the reporting period from February 17, 2002 to June 30, 2002, by the July 31, 2002, due date.

By failing to file semi-annual campaign statements for the reporting period from February 17, 2002 through June 30, 2002, Respondents violated Section 84200, subdivision (a).

#### Count 9

According to records of Respondent Committee, Respondents received approximately \$520 in non-monetary contributions during the reporting period from July 1, 2002 through December 31, 2002. Respondents were required to file a semi-annual campaign statement disclosing its activity for that reporting period with the City by January 31, 2002. According to records maintained by the City, Respondents failed to file a semi-annual campaign statement for the reporting period from July 1, 2002 to December 31, 2002, by the January 31, 2003, due date.

By failing to file semi-annual campaign statements for the reporting period from July 1, 2002 through December 31, 2002, Respondents violated Section 84200, subdivision (a).

#### COUNT 10

##### **Failure to Disclose Contributions Received**

Respondents Committee and Jansen had a duty to disclose on each campaign statement all contributions received during the reporting period covered by the statement.

According to Respondent Committee's records and bank account records, Respondents received 10 non-monetary contributions totaling approximately \$1,402, and monetary contributions totaling approximately \$16,269 during the reporting period from February 17, 2002 through June 30, 2002. Respondents were required to report these contributions in a post-election semi-annual campaign statement due by July 31, 2002. According to the City, Respondents failed to file a post-election semi-annual campaign statement for the reporting period from February 17, 2002 through June 30, 2002.

Also according to Respondent Committee's records, Respondents received two non-monetary contributions totaling \$520.35 during the reporting period from July 1, 2002 through December 31, 2002. Respondents were required to report these contributions on a semi-annual campaign statement due by January 31, 2003. According to the City, Respondents failed to file a semi-annual campaign statement for the reporting period from July 1, 2002 through December 31, 2002, reporting these contributions.

By failing to disclose contributions received totaling approximately \$18,191 in the reporting periods from February 17, 2002 through December 31, 2002, Respondents violated Section 84211, subdivisions (a) and (f).

## CONCLUSION

This matter consists of ten counts, which carry a maximum possible administrative penalty of Fifty Thousand Dollars (\$50,000).

Regarding Count 1, the administrative penalty for failing to disclose a sponsor on a statement of organization and failure to include the sponsor's name in the name of the committee has typically been in the mid-to-high end of the available penalty range. In this matter, Respondents knew that Anderson Honda was Respondent Committee's sponsor on January 30, 2002, and February 8, 2002, when Respondents filed and then amended Respondent Committee's statement of organization. However, Respondents did not disclose Anderson Honda as Respondent Committee's sponsor on the statement or in its name, thereby concealing from the public the identity of its major supporter and the true nature of the sponsored committee's interests. Therefore, imposition of an administrative penalty in the amount of \$4,000 is appropriate for this violation.

Regarding Count 2, the administrative penalty for failing to disclose a contribution has typically been in the mid-to-high end of the penalty range. In this matter, Respondents failed to report contributions totaling \$8,200. While the amount is relatively small, it was approximately 24 percent of the total contributions received during the second pre-election reporting period. Additionally, the two undisclosed donors who contributed a total of \$3,000 were closely affiliated with the undisclosed committee sponsor's owner, John Anderson. Not disclosing these contributions deprived the public of knowing who was supporting the effort to defeat Measure C. Therefore, an administrative penalty in the amount of \$3,500 is appropriate for this violation.

Regarding Counts 3 and 5, the administrative penalty for failing to disclose occupation and/or employer information has typically ranged from \$1,000 to \$2,000. Here, Respondents failed to disclose occupation and employer information for six of their largest individual contributors who donated a total of \$15,500, or approximately 31 percent of the total contributions received during the campaign. Two of these six contributors who donated a total of \$7,000 were also affiliated with John Anderson. Therefore, imposition of an administrative penalty in the amount of \$2,000 per violation is appropriate.

Regarding Count 4, the administrative penalty for failing to disclose a late contribution in cases resolved outside the Commission's Streamlined Late Contribution Enforcement Program has typically been approximately 15 to 25 percent of the amount of the undisclosed contribution(s), depending upon the circumstances of the violation. In this matter, Respondents deposited two contributions totaling \$15,000 on March 4, 2002, the day *before* the election, \$10,000 of which was from Anderson Honda. However, Respondents failed to disclose the contributions on a properly filed late contribution report by March 5, 2002, as required. Instead, they filed the report one day *after* the election disclosing March 5, 2002 as the date the contributions were received. Respondents deprived the public from knowing before the election, the sources of

approximately 30 percent of the total amount of contributions Respondents had received. Therefore, imposition of an administrative penalty in the amount of \$3,750 is appropriate.

Regarding Count 6, the Commission has not yet established a typical administrative penalty for the failure to return contributions for which the recipient did not maintain all the required contributor information. In this matter, Respondents had insufficient occupation and/or employer information for approximately 83 percent of the total number of contributors for which they were required to maintain such information. However, the total monetary amount of the contributions for which Respondents had insufficient information was only 26 percent of the total amount received. Additionally, this was a relatively new law at the time of the March 2002 election. As such, imposition of a penalty in the amount of \$2,000 is appropriate.

Regarding Count 7, in cases involving a committee's failure to report information regarding expenditures made to sub-vendors, the administrative penalty has varied based on the circumstances of the violation, such as the total dollar amount not reported and whether the information should have been reported on a pre-election or post-election campaign statement. In this case, due to the circuitous nature of the transactions, the true recipient of \$9,898 in expenditures was concealed from the public. While the amount of these payments is relatively small, it was approximately 20 percent of Respondents' total expenditures. The majority of the information should have been reported on Respondents' pre-election campaign statement. Accordingly, the circumstances of this violation warrant an administrative penalty of \$3,500.

Regarding Counts 8 and 9, failure to timely file a campaign statement is a serious violation of the Act, because it deprives the public of important information about a candidate and committee's contributors and financial activities. In this matter, Respondents failed to file the post-election semi-annual campaign statement, which would have reflected approximately 42 percent of the total contributions received and almost 66 percent of the total expenditures made during the campaign. Respondent Jansen still had not filed the required campaign statements as of January 18, 2007. Further, Respondent Jansen was uncooperative during the investigation. Only after subpoenas were issued by the Enforcement Division did Respondents provide much of the requested records and information. Therefore, imposition of an administrative penalty in the amount of \$3,250 for Count 8 is appropriate, due to the high level of activity that went undisclosed. Count 9 deserves a penalty of 2,500, due to the lower level of undisclosed activity.

Regarding Count 10, the administrative penalty that has typically been imposed by the Commission for failure to report contributions has been in the mid-to-high end of the available penalty range. One of the primary purposes of the Act is to ensure that the public is provided with complete and accurate information regarding who funded Respondents' campaign. Here, Respondents failed to properly report approximately 42 percent of their total contributions received. This is a serious violation as the public was deprived of significant information regarding Respondents' supporters. Therefore, an administrative penalty of \$3,500 is appropriate for this violation.

Accordingly, the facts of this case, as well as the aforementioned factors, justify imposition of a total administrative penalty of **Thirty Thousand Dollars (\$30,000)**.